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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
JEFFREY LEMEROND,	:	
	:	
Plaintiff,	:	Case No.: 07 CIV 4635 (LAP)
	:	
– against –	:	
	:	
TWENTIETH CENTURY FOX FILM CORP.,	:	
	:	
Defendant.	:	
-----X		

**DECLARATION OF SLADE R. METCALF IN SUPPORT OF MOTION TO
DISMISS OF DEFENDANT TWENTIETH CENTURY FOX FILM CORPORATION**

I, **SLADE R. METCALF**, declare as follows:

1. I am a partner in the law firm of Hogan & Hartson LLP, counsel for defendant Twentieth Century Fox Film Corporation (“Fox”). I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath. I submit this Declaration in support of Fox’s Motion to Dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

2. Before commencing this lawsuit, Plaintiff Jeffrey Lemerond (“Plaintiff”) commenced an action similar to the present case against Fox and other defendants in January, 2007, under his full name, in the Supreme Court of the State of New York, New York County. Plaintiff withdrew that complaint after a few days without serving it.

3. On June 1, 2007, Plaintiff—under the name “John Doe”—filed the within complaint against Fox. The complaint asserted a claim under New York Civil Rights Law § 51 and a claim for quantum meruit/unjust enrichment stemming from Plaintiff’s alleged appearance in a brief sequence of the film *Borat – Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan* (the “Film”).

4. At the request of Plaintiff’s counsel, Fox agreed to accept service of the complaint. Counsel for the parties agreed that service would be deemed effective as of June 26, 2007. As such, Fox’s time to respond to the complaint was set to expire on July 16, 2007.

5. On June 22, 2007, the Honorable William H. Pauley, III (the original judge assigned to this matter) issued an order to show cause (the “Order”) directing Plaintiff’s counsel “to show cause ... why Plaintiff should be permitted to continue to prosecute this action anonymously in light of his statements to the press about this lawsuit.” Judge Pauley set a hearing on July 6, 2007 for this purpose. A true and correct copy of the Order is annexed hereto as Exhibit A.

6. In a letter dated June 25, 2007, counsel for Plaintiff informed Judge Pauley that Plaintiff no longer intended to proceed anonymously. As such, Plaintiff filed the Amended Complaint (the “Complaint”) on June 26, 2007, and is now suing under his given name, Jeffrey Lemerond. A true and correct copy of the Complaint and the Summons is annexed hereto as Exhibit B. The Complaint contains the same two causes of action as in the original complaint.

7. Following Plaintiff’s filing of the Complaint, Judge Pauley canceled the hearing set for July 6, 2007.

8. On June 7, 2007, Fox sent a letter to Judge Pauley requesting that this action be transferred to the Honorable Loretta A. Preska. Fox asked for the transfer because another case

involving the Film, *Todorache, et ano. v. Twentieth Century Fox Film Corporation, et al.*, Index No. 06 Civ. 13369 (LAP), was already before Judge Preska, and the cases share several similarities. Thereafter, the plaintiffs in the *Todorache* action filed an amended complaint including a claim for violation of New York Civil Rights Law § 51, just like Plaintiff here. Fox then sent another letter on June 27, 2007 informing Judge Pauley that the amended complaint in *Todorache* now made the two cases identical. On July 9, 2007, this action was transferred to Judge Preska. A true and correct copy of the Notice of Reassignment is annexed hereto as Exhibit C.

9. The parties to this action then agreed on a briefing schedule for the instant motion to dismiss. The requested briefing schedule was so ordered by this Court on July 18, 2007. A true and correct copy of the so ordered briefing schedule is annexed hereto as Exhibit D. As such, Fox's response to the Complaint is due on July 23, 2007.

I declare under penalty of perjury under the laws of the United States of America and the State of New York that the foregoing is true and correct and that this Declaration was executed in New York, New York on July 23, 2007.

s/ Slade R. Metcalf

SLADE R. METCALF